



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of John Mikorski,
Police Officer (S9999U), Morristown

List Removal Appeal

CSC Docket No. 2019-2118

ISSUED: AUGUST 16, 2019 (HS)

John Mikorski, represented by Brian J. Manetta, Esq., appeals the removal of his name from the eligible list for Police Officer (S9999U), Morristown on the basis of an unsatisfactory criminal record.

The appellant, a non-veteran, took and passed the open-competitive examination for Police Officer (S9999U), which had a closing date of August 31, 2016. The resulting eligible list promulgated on March 29, 2017 and expires on March 30, 2020.¹ The appellant's name was certified to the appointing authority on October 22, 2018. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal record. Specifically, the appointing authority highlighted the following incidents:

- In March 2013, campus security called police to Fairleigh Dickinson University after a resident complained that the appellant was highly intoxicated and had caused the wall of his unit to shake. The report indicated that the appellant was yelling. Police contacted the appellant and confirmed that he was visibly intoxicated at the time of the report. No charges were filed.
- In July 2013, the appellant was involved in breaking up a fight in Atlantic City. The appellant was issued a summons for disorderly conduct, which was later downgraded to a violation of a noise ordinance.

¹ The eligible list was extended one year to March 30, 2020.

- In May 2014, Hanover Township Police reported to a large house party involving alcohol. As police began trying to maintain the scene and clear the area, the appellant began to act in a disorderly manner and was charged with disorderly conduct. The alleged behavior included refusing to put down a beer can when instructed and drinking from it after being told to put it down. The charge was later dismissed.
- In March 2018, police contacted the appellant during an investigation into an assault that took place outside his residence. The appellant and his roommate had been involved in a physical altercation with a neighbor from a downstairs apartment who asked them to turn down their music. In explaining the incident, the appellant indicated that he should not have been playing loud music at 4:00 a.m. out of respect for his neighbors and should have turned down the music when asked to do so. At the time of the police contact with the appellant, he was highly intoxicated. No charges were filed.²

On appeal to the Civil Service Commission (Commission), the appellant emphasizes that he has never been arrested or been convicted of a crime. Rather, the appellant notes, he was only issued two summonses, one of which was dismissed. He argues that the appointing authority has improperly elevated his minor noise violation to a disqualifying factor. The noise violation, in his view, does not adversely relate to the employment sought. The appellant requests reinstatement to the eligible list and appointment with back pay, benefits, seniority and counsel fees. Alternatively, he requests a hearing.

It is noted that despite the opportunity to do so, the appointing authority did not reply.

CONCLUSION

Initially, list removal appeals are treated as reviews of the written record. *See N.J.S.A. 11A:2-6b*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists that can only be resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. For the reasons explained below, no material issue of disputed fact has been presented that would require a hearing. *See Belleville v. Department of Civil Service, 155 N.J. Super. 517 (App. Div. 1978)*.

N.J.S.A. 11A:4-11 and *N.J.A.C. 4A:4-4.7(a)4* provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record that

² It is noted that the appellant was an adult at the time of these incidents.

includes a conviction for a crime that adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. Additionally, pursuant to *N.J.S.A. 11A:4-10*, an appointing authority may only question an eligible for a law enforcement, firefighter or correction officer title as to any arrest. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A. 11A:4-11*. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C. 4A:4-6.1(a)9*, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment. *N.J.A.C. 4A:4-6.3(b)*, in conjunction with *N.J.A.C. 4A:4-4.7(d)*, provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

At the outset, the Commission accepts that, based on the record in this matter, the appellant has not been arrested or been criminally convicted. Nevertheless, he does have multiple negative interactions with law enforcement as an adult with the most recent occurring approximately a mere seven months before the appellant's name was certified to the appointing authority. In one of the incidents, the appellant was found to have violated a noise ordinance. These interactions are indicative of the appellant's exercise of poor judgment, which is not conducive to the performance of the duties of a Police Officer. In this regard, it is recognized that a Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant

includes good character and the image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also, In re Phillips*, 117 N.J. 567 (1990). The public expects Police Officers to present a personal background that exhibits respect for the law and rules. Accordingly, the appellant's history of negative interactions with law enforcement constitutes sufficient cause to remove his name from the subject eligible list.

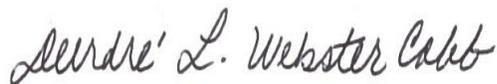
However, while the appellant's background is sufficient to remove his name in this case, his background may be an insufficient basis to remove his name from any future eligible list on which his name may appear provided he avoids further negative interactions with law enforcement going forward.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 14TH DAY OF AUGUST, 2019



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